D.B. CIVIL SPECIAL APPEAL (WRIT) NO.608/2006

Dilip Kumar Vs. State of Rajasthan & Ors.

Date of judgment : 20th Sept., 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HONBLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.R. Mehta for the appellant.

Heard learned counsel for the appellant.

This appeal is directed against the order of the learned Single Judge dated 10th July, 2006 rejecting the writ petition filed by the appellant.

The appellant has claimed the relief in the writ petition submitted by him that the respondents be directed to release or withdraw the petitioner's land measuring 3 bighas and 14 biswas 1.30 hectors of khasra No.204/1, 204/2 and 204 ME of village Sonaliya, Tehsil Gangrar from the acquisition under Section 48 of the Land Acquisition Act. The other undisputed facts are that while the land was required for the purpose of construction of high way way back in 1985, the

petitioner had accepted the amount in respect of 4.14 bighas of the agricultural land standing in his name in the land records in lieu of the land to be surrendered for construction of the road. It is the case of the petitioner himself as set up in the writ petition that no notification has been issued under the Land Acquisition Act. It clearly indicates that no proceedings prior to the present time had taken place under the Land Acquisition Act invoking Section 48 of the Land Acquisition Act enabling the Government to de-acquire the land, possession of which was not taken by the Government in pursuance of the acquisition proceedings. In fact, in reply to the writ petition, it has clearly been stated by the respondents in their return that after payment of compensation for the entire land, the possession of the entire land for which compensation has been paid had been taken by State.

On admitted facts, the provisions of Land Acquisition Act do not apply. Sec.48 of Land Acquisition Act de hors the acquisition proceedings cannot be invoked. Even if the Land Acquisition Act applies and possession in pursuance of the payment of

compensation has been taken thereafter the question of invoking Section 48 in respect of that land, even if the petitioner has re-entered the possession thereafter cannot arise. Such reentry can at best be as trespasser which is liable to be dealt with in accordance with law.

Moreover the petitioner has accepted the amount of price for the entire land held by him as stated above. He has divested himself of all titles in that land. After about 20 years, the petitioner cannot now turn round and seek return of land.

The reliance placed by the learned counsel on Annex.2 dated 11.7.2003 which is an order passed by the Additional Collector, Chittorgarh on the basis of report sought from the Tehsildar only reveals that though the amount was paid for 4.14 bighas of the land to the petitioner for construction of road, actually 1 bigha of land only was utilised and the remaining land had not so far been utilised. The land record continued to be in the name of original holder. It is also stated in the order that for the current scheme of construction of

road between Nimach Nashirabad 0.20 hectors of the land has been notified under the acquisition notification under Section 4 of the Act of 1894. The Collector in his order opined that whether the land vested in the State, for which payment has been made or after excluding the land actually utilised for the construction of road, for the remaining land the petitioner should be asked to repay the amount received by him as a price of that land is not a subject matter of this litigation. Apparently, the order of the Additional Collector dated 11.7.2003 cannot be construed to hold that possession of the land in question was never taken from the petitioner at the relevant time but in reply to the writ petition, it was stated that after payment was paid to the respective owners, the entire land for which the payment was paid was taken possession by the State. Looking from any point of view, no right vest in favour of the appellant to seek release of land in question, hence, he cannot get the relief claimed by him. The question of releasing the land from the title of the State at this juncture cannot be otherwise considered as justified.

The appeal, therefore, fails and is hereby dismissed.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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